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NATIONAL ABORTION FEDERATION (NAF)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NATIONAL ABORTION FEDERATION (NAF),

Plaintiff,

v.

THE CENTER FOR MEDICAL PROGRESS,
BIOMAX PROCUREMENT SERVICES LLC,
DAVID DALEIDEN (aka "ROBERT SARKIS"),
and TROY NEWMAN,

Defendants.

Case No. 3:15-cv-3522-WHO

Hon. William H. Orrick, III

**STIPULATED PROTECTIVE
ORDER FOR PURPOSES OF
EXPEDITED PRELIMINARY
INJUNCTION DISCOVERY**

Date Action Filed: July 31, 2015
Trial Date:

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1. PURPOSES AND LIMITATIONS

1.1 Plaintiff National Abortion Federation (“NAF”) and Defendants the Center for Medical Progress, Biomax Procurement Services, LLC, David Daleiden (aka “Robert Sarkis”) and Troy Newman (collectively, “Defendants”) submit that disclosure and discovery in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation is warranted. Accordingly, the Parties hereby stipulate to and petition the court to enter the following stipulated protective order for the purposes of expedited preliminary injunction discovery (this “Stipulation and Order”). The Parties acknowledge that this Stipulation and Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the information or items that are entitled under the applicable legal principles to treatment as confidential.

1.2 This Protective Order shall not be construed to preclude the named parties and client representatives from attending depositions taken in this Action.

2. DEFINITIONS

2.1 “Action” means the above-captioned action, presently pending in the United States District Court for the Northern District of California.

2.2 Party: Any party to this Action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

2.3 Non-Party: Any person, not a Party, who serves as a witness or provides Disclosure or Discovery Material in this Action.

2.4 Disclosure or Discovery Material: All items or information, regardless of the medium or the manner in which it is generated, stored or maintained (including, among other things, testimony, transcripts, or tangible things), that is produced or generated in disclosures or responses to discovery in this Action.

2.5 “CONFIDENTIAL” Information or Items: Disclosure or Discovery Material that is non-public and that a Party or Non-Party in good faith believes must be held

confidential to protect personal privacy interests, confidential, proprietary, and/or commercially sensitive information, or otherwise has a compelling need for privacy.

2.6 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

Information or Items: Disclosure or Discovery Material that is extremely confidential and/or sensitive in nature, including highly sensitive personal privacy information, disclosure of which to another Party or Non-Party the Producing Party reasonably believes is likely to cause a substantial risk of serious injury that could not be avoided by less restrictive means. This includes all NAF Personal Identification Information as defined in paragraph 2.11 below.

2.7 Receiving Party: A Party that receives Disclosure or Discovery Material provided, produced or made available for inspection by a Producing Party.

2.8 Producing Party: A Party or Non-Party that provides, produces or makes available for inspection Disclosure or Discovery Material in the course of this Action.

2.9 Designating Party: A Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.

2.10 Protected Material: Any Disclosure or Discovery Material that is designated as or deemed to be CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.

2.11 NAF Personal Identification Information: Any Disclosure or Discovery Material that NAF produces or discloses may contain information related to NAF that reveals private identifying information. Given the highly sensitive nature of this Action and the privacy interests involved, such information is defined broadly to include:

- (a) Names of NAF staff, NAF members, and any attendees or other participants of any NAF Annual Meeting;
- (b) Security code words used by NAF;
- (c) All photos, videos or audio recordings of NAF staff, NAF members, and any attendees or other participants of any NAF Annual Meeting;

(d) Social-security numbers of NAF staff, NAF members, and any attendees or participants at any NAF Annual Meeting;

(e) Taxpayer-identification numbers of NAF, NAF staff, NAF members, and any attendees or participants at any NAF Annual Meeting;

(f) Any financial account numbers of NAF, NAF staff, NAF members, and any attendees or participants at any NAF Annual Meeting;

(g) Birthdates of NAF staff, NAF members, and any attendees or participants at any NAF Annual Meeting;

(h) Direct telephone numbers of NAF staff, NAF members, and any attendees or participants at any NAF Annual Meeting;

(i) Drivers' License numbers of NAF staff, NAF members, and any attendees or participants at any NAF Annual Meeting;

(j) Addresses of NAF staff, NAF members, and any attendees or participants at any NAF Annual Meeting; and

(k) Email addresses of NAF staff, NAF members, and any attendees or participants at any NAF Annual Meeting.

2.12 Outside Counsel: Attorneys who are not employees of a Party but who are employed at law firms that appear on the pleadings as counsel for a Party in this Action and who have been admitted to practice before the United States District Court of the Northern District of California in this Action (including by *pro hac vice* admission).

2.13 In-House Counsel: Attorneys who are employees of a Party who have signed the "General Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A-1.

2.14 Non-Party Counsel: Attorneys who represent a Non-Party and who have signed the "General Acknowledgment of Confidentiality and Agreement to be Bound by Protective Order" that is attached hereto as Exhibit A-1.

1 2.15 Counsel (without qualifier): Outside Counsel and In-House Counsel (as
2 well as their support staffs).

3 2.16 Expert: a person who has been retained by a Party or its Outside Counsel
4 to serve as a testifying or non-testifying expert or consultant in this Action. This definition
5 includes any professional jury or trial consultant retained in connection with this Action but does
6 not include mock jurors.

7 2.17 Professional Vendors: Persons or entities that provide litigation support
8 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
9 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
10 subcontractors.

11 3. SCOPE

12 The protections conferred by this Stipulation and Order cover not only Protected Material
13 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
14 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
15 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

16 However, the protections conferred by this Stipulation and Order do not cover the
17 following information: (a) any information that is in the public domain at the time of disclosure to
18 a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party
19 as a result of publication not involving a violation of this Order, including becoming part of the
20 public record through trial or otherwise; and (b) any information known to the Receiving Party
21 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
22 obtained the information lawfully and under no obligation of confidentiality to the Designating
23 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

24 4. DURATION

25 After the termination of this Action, the confidentiality obligations imposed by this
26 Stipulation and Protective Order shall remain in effect until a Designating Party agrees otherwise
27 in writing or a Court order otherwise directs.
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1 **5. DESIGNATING PROTECTED MATERIAL**

2 5.1 Procedures for Designating Material for Protection: Any Party to this
3 Action, or any Non-Party who produces Disclosure or Discovery Material, shall have the right to
4 designate as CONFIDENTIAL or HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY
5 any Protected Material it produces. All Protected Material shall bear a legend on each page
6 stating that the material is “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL —
7 ATTORNEYS’ EYES ONLY.” Materials designated as or deemed to be CONFIDENTIAL or
8 HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY consistent with this Stipulation and
9 Protective Order are subject to the provisions of this Stipulation and Protective Order and shall be
10 protected, used, handled and disposed of in accordance with the provisions of this Stipulation and
11 Protective Order.

12 Each Party or Non-Party that designates information or items for protection under this
13 Order must take care to limit any such designation to specific material that qualifies under the
14 appropriate standards set forth herein. A Designating Party must take care to designate for
15 protection only those materials, documents, items, or oral or written communications that so
16 qualify.

17 5.2 Manner and Timing of Designations: Except as otherwise provided in this
18 Stipulation and Protective Order (*see, e.g.*, second paragraph of 5.2(a), below) or as otherwise
19 stipulated or ordered, material that qualifies for protection under this Stipulation and Protective
20 Order must be clearly designated as such before the material is disclosed or produced.

21 Designation in conformity with this Stipulation and Protective Order requires:

22 (a) For Information in Documentary Form (apart from transcripts of
23 depositions or other pretrial proceedings): That the Producing Party affix the legend
24 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” on each
25 page that contains Protected Material. In order to speed up the process of producing large
26 volumes of Protected Material, multi-page documents in which Protected Material is pervasive
27 may be marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
28 ONLY” throughout. Where it is not possible to affix a legend to particular Protected Material,

1 the Producing Party shall take reasonable steps to give all Receiving Parties notice of the
 2 Protected Material's status as such. Except as otherwise agreed, within 45 days after receipt of
 3 Disclosure or Discovery Material, any Receiving Party may designate the material as
 4 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

5 A Party or Non-Party that makes original documents or materials available for inspection
 6 need not designate them for protection until after the inspecting Party has indicated which
 7 material it would like copied and produced. During the inspection and before the designation, all
 8 of the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –
 9 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
 10 copied and produced, the Producing Party must determine which documents qualify for protection
 11 under this Order. Then, before producing the specified documents, the Producing Party must
 12 affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
 13 ATTORNEYS' EYES ONLY") on each page that contains Protected Material, except that multi-
 14 page documents may be designated in accordance with the preceding paragraph.

15 (b) For Testimony Given in Deposition or in Other Pretrial
 16 Proceedings: Any Party or Non-Party offering or sponsoring the testimony may identify on the
 17 record, before the close of the deposition, hearing or other proceeding, all protected testimony and
 18 may further specify any portions of the testimony that qualify as "CONFIDENTIAL" or
 19 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." Alternatively, within thirty (30)
 20 days of receipt of a transcript or recording of a deposition or other pretrial proceeding, the
 21 offering or sponsoring Party or Non-Party may designate such transcript or recording or any
 22 portion thereof as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
 23 ONLY" by notifying all Parties, in writing, of the specific pages and lines of the transcript or
 24 recording that should be treated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
 25 ATTORNEYS' EYES ONLY." All transcripts or recordings of depositions or other pretrial
 26 proceedings shall be treated as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" for
 27 thirty (30) days after receipt of the transcript or recording, or until written notice of a designation
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1 is received, whichever occurs first. In the case of a Non-Party, testimony can be designated as
2 containing "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
3 ONLY" information by a Party, the Non-Party or upon agreement of the Parties.

4 Transcript pages containing Protected Material must be separately bound by the court
5 reporter, who must affix to the top of each such page the legend "CONFIDENTIAL" or
6 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" as instructed by the Party or Non-
7 Party offering or sponsoring the witness or presenting the testimony.

8 In the event the deposition is videotaped, the original and all copies of the videotape shall
9 be marked by the video technician to indicate that the contents of the videotape are subject to this
10 Stipulation and Protective Order, substantially along the lines of "This videotape contains
11 confidential testimony used in this case and is not to be viewed or the contents thereof to be
12 displayed or revealed except pursuant to the terms of the operative Stipulation and Protective
13 Order in this Action or pursuant to written stipulation of the parties."

14 Except as stated in Section 1.2 above, counsel for any Producing Party shall have the right
15 to exclude from oral depositions, other than the deponent, deponent's counsel, the reporter and
16 videographer (if any), any person who is not authorized by this Stipulation and Protective Order
17 to receive or access Protected Material based on the designation of such Protected Material. Such
18 right of exclusion shall be applicable only during periods of examination or testimony regarding
19 such Protected Material.

20 (c) For Information Produced in A Form Other than Documentary, and
21 for Any Other Tangible Items: The Producing Party shall affix in a prominent place on the
22 exterior of the container or containers in which the information or item is stored the legend
23 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

24 (d) For Inspection of Things or Premises: The Producing Party shall
25 state in writing prior to the inspection that "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
26 ATTORNEYS' EYES ONLY" information or material will be revealed.

1 5.3 Upward Designation of Information or Items Produced by Other Parties or
2 Non-Parties. A Party may upward designate (i.e., change any documents or other material
3 produced without a designation to a designation of “CONFIDENTIAL” or “HIGHLY
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or change any Protected Material produced
5 as “CONFIDENTIAL” to a designation of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
6 ONLY,”) any Disclosure or Discovery Material produced by any other Party or Non-Party,
7 provided that said Disclosure or Discovery Material contains the upward designating Party’s own
8 CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY information,
9 or otherwise is entitled to protective treatment under Fed. R. Civ. P. 26(c). Upward designation
10 shall be accomplished by providing written notice to all Parties identifying (by Bates number or
11 other individually identifiable information) the Disclosure or Discovery Material to be re-
12 designated within sixty (60) days of production by the Producing Party. Failure to upward
13 designate within sixty (60) days of production, alone, will not prevent a Party from obtaining the
14 agreement of all Parties to upward designate certain Disclosure or Discovery Material or from
15 moving the Court for such relief. Any Party may object to the upward designation of Disclosure
16 or Discovery Material pursuant to the procedures set forth herein regarding challenging
17 designations.

18 5.4 Inadvertent Failures to Designate and Redesignation: A Producing Party
19 that inadvertently fails to designate Disclosure or Discovery Material as “CONFIDENTIAL” or
20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to this Stipulation and
21 Protective Order at the time of its production shall be able to make a correction to its designation,
22 with the Receiving Party reserving the right to assert such re-designation is improper pursuant to
23 the procedures set forth herein regarding challenging designations. Such failure shall be
24 corrected by providing to the Receiving Party written notice of the error and substituted copies of
25 the inadvertently unmarked or mis-marked Disclosure or Discovery Materials. Any party
26 receiving such inadvertently unmarked or mis-marked Disclosure or Discovery Materials shall,
27 within five (5) days of receipt of the substitute copies, destroy or return to the law firm
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1 representing the Producing Party all copies of such mis-designated documents. The Producing
 2 Party shall comply with Paragraph 5.2 when redesignating Disclosure or Discovery Material as
 3 Protected Material. Following any redesignation of Disclosure or Discovery Material as
 4 Protected Material (or redesignation of “CONFIDENTIAL” material as “HIGHLY
 5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”), the Party receiving such Protected Material
 6 shall take reasonable steps to comply with the redesignation, including, without limitation,
 7 retrieving all copies and excerpts of any redesignated Protected Material from persons not entitled
 8 to receive it as re-designated.

9 A Receiving Party shall not be in breach of this Stipulation and Protective Order for any
 10 use of such inadvertently-non-designated or inadvertently-mis-designated material before the
 11 Receiving Party receives notice of the inadvertent failure to designate, unless a reasonable person
 12 would have realized that the material should have been appropriately designated with a
 13 confidentiality designation under this Stipulation and Protective Order. Once a Receiving Party
 14 has received notice of the inadvertent failure to designate pursuant to this provision, the
 15 Receiving Party shall treat such material at the appropriately designated level pursuant to the
 16 terms of this Stipulation and Protective Order, reserving all rights to assert that such re-
 17 designation is not proper under the procedures set forth herein regarding challenging
 18 designations.

19 **6. REDACTING NAF PERSONAL IDENTIFICATION INFORMATION**

20 In addition to designating Disclosure or Discovery material containing NAF Personal
 21 Identification Information as defined in paragraph 2.11 above as “HIGHLY CONFIDENTIAL –
 22 ATTORNEYS’ EYES ONLY” in accordance with this Stipulation and Order, NAF may redact
 23 all NAF Personal Identification Information from all Disclosure and Discovery material it
 24 produces for the purposes of Expedited Preliminary Injunction Discovery. The redaction of NAF
 25 Personal Identification Information will be done in such a way that those persons will be
 26 anonymously identified in a consistent, recognizable manner (*e.g.*, Person #1, Person #2, etc.; or
 27 Security Code), and NAF will disclose to Outside Counsel the identity of any witnesses who have
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1 been noticed for deposition and whose NAF Personal Identification Information has been
2 redacted in accordance with this provision.

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4 **7. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

5 7.1 Timing of Challenges: The Receiving Party must challenge the
6 Designating Party's designations within ninety (90) days of receipt of the challenged information.

7 7.2 Meet and Confer: A Party that elects to initiate a challenge to a
8 Designating Party's confidentiality designation must do so in good faith and must begin the
9 process by conferring directly (in voice-to-voice dialogue; other forms of communication are not
10 sufficient) with counsel for the Designating Party. In conferring, the challenging Party must
11 identify the specific Bates (or other individually identifiable) range(s) for the challenged
12 document(s), explain the basis for its belief that the confidentiality designation was not proper
13 and must give the Designating Party a reasonable opportunity (not to exceed 3 business days) to
14 review the designated material, reconsider the circumstances and, if no change in designation is
15 offered, explain the basis for the chosen designation. A challenging Party may proceed to the
16 next stage of the challenge process only if it has first engaged in this meet-and-confer process.

17 7.3 Judicial Intervention: A Party that elects to press a challenge to a
18 confidentiality designation after considering the justification offered by the Designating Party
19 pursuant to the preceding paragraph may prepare in accordance with the Court's Standing Order a
20 concise joint statement of five pages or less, stating the nature and status of the dispute, and
21 certifying that the Parties have met the meet-and-confer requirement (or if a joint statement is not
22 possible, each side may submit a brief individual statement of two pages or less, including a
23 certification of compliance with the meet-and-confer requirement and an explanation of why a
24 joint statement was not possible).

25 Nothing in this Stipulation and Protective Order shall preclude or prejudice any Party
26 from arguing for or against any designation, establish any presumption that a particular
27 designation is valid, or alter the burden of proof that would otherwise apply in a dispute over
28 discovery or disclosure of information. Until the Court rules on the challenge, all Parties shall

continue to afford the material in question the level of protection to which it is entitled under the Designating Party's designation.

8. ACCESS TO AND USE OF PROTECTED MATERIAL

8.1 Basic Principles: A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for this case or any related appellate proceeding. A Receiving Party may not use Protected Material for any other purpose, including, without limitation, any other litigation or any business, personal, or political endeavor. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order and may not be disclosed to any other person, entity, or to the media. In the event of a dispute regarding whether a proposed disclosure is "reasonably necessary for this Action," the Parties shall meet and confer in good faith on an expedited basis, and shall promptly raise any dispute that cannot be resolved through the meet and confer process on an expedited basis in accordance with the joint statement procedures outlined in Section 7.3; or, alternatively, the Parties may seek resolution of their dispute through a more expedited dispute-resolution mechanism that is acceptable to the Court as needed due to the time-sensitivity of the dispute at issue (*e.g.*, a telephone conference with the Court during a deposition). For purposes of this Stipulation and Protective Order, and specifically as utilized in this paragraph, "disclosed" or "disclose" shall mean any physical or electronic showing of the Protected Materials to any person, including communication in any form of the contents (in whole or in part) or existence of the Protected Materials. When this Action has been terminated, a Receiving Party must comply with the provisions of Paragraph 12 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner ensuring that access is limited to the persons authorized under this Order.

8.2 Disclosure of "CONFIDENTIAL" Information or Items: Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

1 (a) The Receiving Party's Outside Counsel and such Outside Counsel's
2 immediate paralegals and staff, and any copying or clerical litigation support services working at
3 the direction of such counsel, paralegals, and staff, to whom it is reasonably necessary to disclose
4 the information for this Action;

5 (b) the former and current officers, directors, and employees (including
6 In-House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
7 Action and who have signed the "General Acknowledgment of Confidentiality and Agreement to
8 Be Bound by Protective Order" that is attached hereto as Exhibit A-1;

9 (c) a Non-Party and Non-Party's Counsel who have (1) signed the
10 "General Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order"
11 that is attached hereto as Exhibit A-1 and (2) to whom disclosure is reasonably necessary for this
12 Action;

13 (d) any insurer or indemnitor of any defendant in this Action;

14 (e) the Court and any mediators or arbitrators and their respective
15 personnel;

16 (f) court reporters, their staffs, and professional vendors to whom
17 disclosure is reasonably necessary for this Action and who have signed the "General
18 Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order" that is
19 attached hereto as Exhibit A-1;

20 (g) mock jurors, subject to the provisions of Paragraphs 8.6 and 8.7
21 below; and

22 (h) experts, subject to the provisions of Section 8.6 below;

23 (i) the author(s) and recipient(s) of the "CONFIDENTIAL" Material
24 who have signed the "General Acknowledgment of Confidentiality and Agreement to Be Bound
25 by Protective Order" that is attached hereto as Exhibit A-1;

26 (j) any other person with the prior written consent of the Designating
27 Party.
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(a) In-House Counsel of a Party to whom disclosure is reasonably necessary for this Action and who have been admitted to practice before the United States District Court of the Northern District of California in this Action or who have signed the “General Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order” that is attached hereto as Exhibit A-1;

(c) a Non-Party and Non-Party's Counsel who have (1) signed the "General Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A-1 and (2) to whom disclosure is reasonably necessary for this Action;

(e) the Court, and any mediators or arbitrators, and their respective

(g) the author(s) and recipient(s) of the “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Material who have signed the “General Acknowledgment of

1 Confidentiality and Agreement to Be Bound by Protective Order” that is attached hereto as
2 Exhibit A-1.

3 8.4 General Procedure for Disclosure of “CONFIDENTIAL” or “HIGHLY
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:

5 (a) Before any information or item designated “CONFIDENTIAL,” or
6 substance or summary thereof, shall be disclosed to the persons or entities identified in sub-
7 paragraphs (b), (c), (d), (f), (g), (h), (i), and (j) of paragraph 8.2 above, the Parties are hereby
8 ordered to tender a copy of this Stipulation and Protective Order to each such person and witness
9 in order that each such entity or person to whom such disclosure of “CONFIDENTIAL”
10 information or item is made shall be on notice and fully informed that the existence and substance
11 of the Stipulation and Protective Order is, and is intended to be, equally binding upon it, him or
12 her. Before any information or item designated “CONFIDENTIAL,” or substance or summary
13 thereof, is disclosed to any such person, each such person shall sign and abide by the terms of the
14 General Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order,
15 attached hereto as Exhibit A-1, The person to whom the “CONFIDENTIAL” information or item
16 is disclosed shall not give, show, or otherwise divulge any of the “CONFIDENTIAL” information
17 or item to any entity or person except as specifically provided for by this Stipulation and
18 Protective Order.

19 (b) Before any information or item designated “HIGHLY
20 CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” or substance or summary thereof, shall be
21 disclosed to the persons or entities identified in sub-paragraphs (a), (c), (d), (f), and (g) of
22 paragraph 8.3 above, the Parties are hereby ordered to tender a copy of this Stipulation and
23 Protective Order to each such person and witness in order that each such entity or person to whom
24 such disclosure of “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” information or
25 item is made shall be on notice and fully informed that the existence and substance of the
26 Stipulation and Protective Order is, and is intended to be, equally binding upon it, him or her.
27 Before any information or item designated “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES
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ONLY,” or substance or summary thereof, is disclosed to any such person, each such person shall sign and abide by the terms of the General Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order, attached hereto as Exhibit A-1. The person to whom the “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” information or item is disclosed shall not give, show, or otherwise divulge any of the “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” information to any entity or person except as specifically provided for by this Stipulation and Protective Order.

8.5 Procedure for Disclosure of “CONFIDENTIAL” Information or Items to Mock Jurors: A Receiving Party may disclose to mock jurors materials prepared by its Outside Counsel that are derived from information or items designated “CONFIDENTIAL” (but not materials that are derived from information or items designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”), so long as the derivative materials do not include the as-produced information itself. Before providing such material to a mock juror, the Receiving Party must, in compliance with Paragraph 8.4(a) above, tender a copy of this Stipulation and Protective Order to each mock juror in order that each person to whom such disclosure is made shall be on notice and fully informed that the existence and substance of the Stipulation and Protective Order is, and is intended to be, equally binding upon it, him or her, as well as upon the Parties and their counsel. Before any materials prepared by Outside Counsel that are derived from information or items designated “CONFIDENTIAL” are disclosed to a mock juror, each such person shall sign and abide by the terms of the General Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order, attached hereto as Exhibit A-1. The mock juror to whom the material is disclosed shall not give, show, or otherwise divulge any of the information contained therein to any entity or person except as specifically provided for by this Stipulation and Protective Order.

8.6 Procedure for Disclosure of “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts:

(a) Before any “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” information, or substance or summary thereof, shall be disclosed

1 to an Expert, the Expert shall sign and abide by the terms of the “Expert/Consultant
2 Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order,” attached
3 as Exhibit A-2.

4 (b) Unless otherwise ordered by the Court or agreed in writing by the
5 Designating Party, a Receiving Party that seeks to disclose to an Expert any information or item
6 that has been designated “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY” first
7 must make a written request to the Designating Party that (1) identifies the specific “HIGHLY
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving Party seeks to
9 disclose to the Expert; (2) sets forth the full name of the Expert and the city and state of his or her
10 primary residence, (3) attaches the Expert’s fully executed Expert/Consultant Acknowledgment
11 of Confidentiality and Agreement to Be Bound by Protective Order (attached hereto as Exhibit A-
12 2); and (4) attaches a copy of the Expert’s current resume that identifies (by name and number of
13 the case, filing date, and location of court) any litigation in connection with which the Expert has
14 provided any professional services during the preceding five years. The Party seeking to disclose
15 “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY” material to an Expert shall
16 provide such other information regarding the Expert’s professional activities reasonably requested
17 by the Producing Party in order for it to evaluate whether good cause exists to object to the
18 disclosure to the Expert.

19 (c) A Party that makes a request and provides the information specified
20 in the preceding paragraph may disclose the subject Protected Material to the identified Expert
21 unless, within seven (7) days of delivering the request, the Party receives a written objection from
22 the Designating Party. Any such objection must set forth in detail the grounds on which it is
23 based.

24 (d) A Designating Party that makes a timely written objection must
25 meet and confer with the Party seeking to disclose the information to the Expert (through direct
26 voice-to-voice dialogue) to try to resolve the matter by agreement. If no agreement is reached,
27
28

1 the Party objecting to the disclosure to the Expert may seek judicial intervention in accordance
2 with the joint statement procedures outlined in Section 7.3.

3 8.7 The Party's Counsel who discloses "CONFIDENTIAL" or "HIGHLY
4 CONFIDENTIAL – ATTORNEYS' EYES ONLY" Material shall be responsible for assuring
5 compliance with the terms of this Stipulation and Protective Order regarding execution of the
6 "General Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order"
7 by persons to whom such Protected Material is disclosed and shall obtain and retain the originals
8 of the "General Acknowledgment of Confidentiality and Agreement to Be Bound by Protective
9 Order" executed by qualified recipients of Protected Material (if such execution was required by
10 terms of this Stipulation and Protective Order).

11 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
12 **OTHER LITIGATION OR GOVERNMENT INVESTIGATIONS**

13 If a Receiving Party is served with a subpoena, including a Congressional subpoena or
14 other legislative or executive branch subpoena, or an order issued in other litigation, legislative,
15 executive, administrative, or other legal proceedings or investigation that would compel
16 disclosure of any information or items designated in this Action as "CONFIDENTIAL" or
17 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the Receiving Party must so
18 notify the Designating Party in writing (by email, if possible) immediately and in no event more
19 than three court days after receiving the subpoena or order. Such notification must include a copy
20 of the subpoena or Court order.

21 The Receiving Party must also immediately inform in writing the party who caused the
22 subpoena or order to issue in the other litigation, legislative, executive, administrative, or other
23 legal proceedings or investigation that some or all of the material covered by the subpoena or
24 order is the subject of this Stipulation and Protective Order. In addition, the Receiving Party must
25 deliver a copy of this Stipulation and Protective Order promptly to the party in the other action
26 that caused the subpoena or order to issue.
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28

1 The purpose of imposing these duties is to alert the interested parties to the existence of
 2 this Stipulation and Protective Order and to afford the Designating Party in this case an
 3 opportunity to try to protect its confidentiality interests in the court or tribunal from which the
 4 subpoena or order issued. The Designating Party shall bear the burden and expense of seeking
 5 protection in that court or tribunal of its Protected Material. Nothing in these provisions should
 6 be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful
 7 directive from another court or tribunal or a subpoena issued by a legislative or executive body or
 8 agent.

9 None of the foregoing provisions are intended to limit or supersede the Parties' rights or
 10 obligations with respect to any preexisting agreements between the Parties.

11 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

12 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 13 Material to any person or in any circumstance not authorized under this Stipulation and Protective
 14 Order, the Receiving Party must immediately: (a) notify the Designating Party in writing of the
 15 unauthorized disclosure (by email, if possible) immediately and in no event more than three court
 16 days after learning of the disclosure; (b) use its best efforts to retrieve all copies of the Protected
 17 Material subject to the unauthorized disclosure; (c) inform the person or persons to whom
 18 unauthorized disclosures were made of all the terms of this Order; and (d) request such person or
 19 persons to execute the "General Acknowledgment of Confidentiality and Agreement to Be Bound
 20 by Protective Order" (Exhibit A-1). Unauthorized or inadvertent disclosure does not change the
 21 status of Discovery Material or waive the right to maintain the disclosed document or information
 22 as Protected.

23 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE** 24 **PROTECTED MATERIAL**

25 11.1 When a Producing Party gives notice to the Receiving Party or the
 26 Receiving Party otherwise becomes aware that certain inadvertently produced material, including
 27 any NAF Personal Identification Information, is subject to a claim of privilege or other
 28 protection, the Receiving Party must promptly return or destroy the specified information and any

1 copies it has and may not sequester, use or disclose the information until the claim is resolved.
2 This includes a restriction against presenting the information to the Court for a determination of
3 the claim. Pursuant to Federal Rule of Evidence 502(d) and (e), the production of privileged or
4 work-product protected documents or information, including electronically stored information,
5 whether inadvertent or not, is not a waiver of the privilege or protection in connection with
6 discovery in this case or any other federal proceeding.

7 11.2 Additionally, the inadvertent or unintentional disclosure by the Producing
8 Party of Confidential Information—including Disclosure or Discovery Material that contains
9 NAF Personal Identification Information—shall not be deemed a waiver in whole or in part of the
10 Designating Party's claim of confidentiality, either as to the specific information disclosed or as
11 to any other information relating thereto or the same or related subject matter.

12 **12. FILING PROTECTED MATERIAL**

13 Without written permission from the Designating Party or a Court order secured after
14 appropriate notice to all interested persons, a Party may not file any Protected Material in the
15 public record in this Action. A Party that seeks to file under seal any Protected Material must
16 comply with Civil Local Rule 79-5. A Party who seeks to introduce Protected Material at a
17 hearing, pretrial or other proceeding shall advise the Court at the time of introduction that the
18 information sought to be introduced is protected. If the Party who designated the information as
19 Protected Material requests the protection be continued, the Court will review the information to
20 determine if the information is entitled to continued protection. Prior to disclosure of Protected
21 Material at a hearing, the Producing Party may seek further protections against public disclosure
22 from the Court.

23 **13. FINAL DISPOSITION**

24 13.1 Unless otherwise ordered or agreed in writing by the Producing Party,
25 within 90 days after the final termination of this Action and upon receiving a written request to do
26 so from the Producing Party or Designating Party, each Receiving Party must destroy all
27 Protected Material, return it to the Producing Party, or make the Protected Material available for
28

1 pick-up by the Producing Party. As used in this order, “final termination” shall be deemed to be
2 the later of (1) dismissal of all claims and defenses in this Action, with or without prejudice, and
3 (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands,
4 trials, or reviews of this Action, including the time limits for filing any motions or applications
5 for extension of time pursuant to applicable laws.

6 13.2 As used in this paragraph, “all Protected Material” includes all copies,
7 abstracts, compilations, summaries or any other form of reproducing or capturing any of the
8 Protected Material. Whether the Protected Material is returned or destroyed upon request by the
9 Producing Party, the Receiving Party must submit a written certification to the Producing Party
10 (and, if not the same person or entity, to the Designating Party) by the 90-day deadline that
11 represents that all Protected Material that was returned or destroyed and affirms that the
12 Receiving Party has not retained any copies, abstracts, compilations, summaries, or other forms of
13 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel
14 are entitled to retain copies of all pleadings, motion papers, transcripts, legal memoranda,
15 correspondence, and attorney work product (but not document productions), even if such
16 materials contain Protected Material, for archival purposes. Any such copies of pleadings,
17 motion papers, transcripts, legal memoranda, correspondence, and attorney work product that
18 contain or constitute Protected Material remain subject to this Stipulation and Protective Order as
19 set forth in Paragraph 4 (DURATION), above.

20 **14. DISCOVERY FROM EXPERTS OR CONSULTANTS**

21 14.1 Testifying experts shall not be subject to discovery with respect to any
22 draft of his or her report(s) in this case. Draft reports, notes, or outlines for draft reports
23 developed and drafted by the testifying expert and/or his or her staff are also exempt from
24 discovery.

25 14.2 Discovery of materials provided to testifying experts shall be limited to
26 those materials, facts, consulting expert opinions, and other matters actually relied upon by the
27 testifying expert in forming his or her final report, trial, or deposition testimony or any opinion in
28

1 this case. No discovery can be taken from any non-testifying expert except to the extent that such
 2 non-testifying expert has provided information, opinions, or other materials to a testifying expert
 3 relied upon by that testifying expert in forming his or her final report(s), trial, and/or deposition
 4 testimony or any opinion in this case.

5 14.3 No conversations or communications between counsel and any testifying or
 6 consulting expert will be subject to discovery unless the conversations or communications are
 7 relied upon by such experts in formulating opinions that are presented in reports or trial or
 8 deposition testimony in this case.

9 14.4 Materials, communications, and other information exempt from discovery
 10 under the foregoing Paragraphs 14.1, 14.2, and 14.3 shall be treated as attorney-work product for
 11 the purposes of this litigation and Order.

12 **15. MISCELLANEOUS**

13 15.1 Right to Further Relief: Nothing in this Order abridges the right of any
 14 person to seek its modification by the Court in the future.

15 15.2 Right to Assert Other Objections: By stipulating to the entry of this
 16 Protective Order, no Party waives any right it would otherwise have to object to disclosing or
 17 producing any information or item on any ground not addressed in this Stipulation and Protective
 18 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
 19 the material covered by this Stipulation and Protective Order.

20 15.3 Computation of Time: The computation of any period of time prescribed
 21 or allowed by this Order shall be governed by the provisions for computing time set forth in
 22 Federal Rules of Civil Procedure 6.

23 15.4 Fact of Designation Not Admissible: The fact of designation, or failure to
 24 designate, Disclosure or Discovery Materials as CONFIDENTIAL or HIGHLY
 25 CONFIDENTIAL – ATTORNEYS' EYES ONLY pursuant to this Stipulation and Protective
 26 Order shall not be admissible for any purpose in a trial on the merits or at any other proceeding
 27 other than at a proceeding arising from or related to this Stipulation and Protective Order.
 28

15.5 Successors: This Order shall be binding upon the Parties hereto, their attorneys, and their successors, executors, heirs, assigns, and employees.

15.6 The provisions of this Stipulation and Protective Order do not apply to any trial proceedings in this Action. The Parties will separately request the Court to enter an Order governing the handling of such materials at trial.

15.7 The Court shall retain jurisdiction to enforce the terms of this Stipulation and Protective Order.

15.8 Nothing in this Stipulation and Order shall alter the requirements for and scope of expert discovery in accordance with Federal Rule of Civil Procedure 26, local rules, and case law.

15.9 The procedures set forth in this Stipulation and Order shall apply to every action that is subject to this proceeding, whether filed in or transferred to this Court for so long as such actions are pending.

STIPULATED AND AGREED TO BY:

Dated: August 24, 2015

By /s/ Derek D. Foran
Derek D. Foran

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*Attorney for Plaintiff NATIONAL
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1 Dated: August 24, 2015

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20 Dated: August 24, 2015

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"Robert Sarkis")*

ATTESTATION OF E-FILED SIGNATURE

I, Derek F. Foran, am the ECF user whose ID and password are being used to file this [PROPOSED] STIPULATED PROTECTIVE ORDER FOR PURPOSES OF EXPEDITED PRELIMINARY INJUNCTION DISCOVERY. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that Carly Gammill and John Sauer have concurred in this filing.

Dated: August 24, 2015

MORRISON & FOERSTER LLP

By: /s/ Derek Foran
Derek F. Foran

Attorneys for Plaintiff
NATIONAL ABORTION FEDERATION

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Date: August 26, 2015


William H. Orrick
United States District Judge

EXHIBIT A-1**GENERAL ACKNOWLEDGMENT OF CONFIDENTIALITY AND AGREEMENT TO
BE BOUND BY PROTECTIVE ORDER**

I, _____, declare under penalty of perjury that I have read in its entirety and understand the Stipulation and Protective Order that was issued by the United States District Court for the Northern District of California on _____, 201__ in the case of *National Abortion Federation v. Center for Medical Progress et al.*, Case No. 3:15-cv-3522-WHO, pending in the Northern District of California.

I agree to comply with and be bound by all the terms of the Stipulation and Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to the Stipulation and Protective Order to any person or entity except in strict compliance with the provisions of the Stipulation and Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of the Stipulation and Protective Order even if such enforcement proceedings occur after termination of this action.

Executed on at _____ at _____.

Name:

Address:

EXHIBIT A-2

**EXPERT/CONSULTANT ACKNOWLEDGMENT OF CONFIDENTIALITY AND
AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**

I, _____, declare:

1. I reside at _____.

2. I have read the Stipulation and Protective Order ("Order") in *National Abortion Federation v. Center for Medical Progress et al.*, Case No. 3:15-cv-3522-WHO, pending in the Northern District of California.

3. I am familiar with the contents of the Order and agree to comply and be bound by the provisions thereof.

4 I will not divulge to persons other than those specifically authorized by the Order, and will not copy or use except solely for the purposes of this litigation and only as expressly permitted by the terms of the Order, any Confidential or Highly Confidential Information obtained pursuant to the Order.

5. By signing below, I hereby agree to submit to the jurisdiction of the United States District Court for the Northern District of California for resolving any and all disputes regarding the Order and this Acknowledgment of Confidentiality. I further agree that any and all disputes regarding the Order and this Acknowledgment of Confidentiality shall be governed by the laws of the State of California, and that the district court for the Northern District of California shall be the sole and exclusive venue for resolving any disputes arising from the Order and this Acknowledgment of Confidentiality.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on at _____ at _____.

Name:

Address: